

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 28, 2016

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2016AP206

Cir. Ct. No. 2015SC1306

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

TOM WEBER,

PLAINTIFF-RESPONDENT,

V.

MENARD, INC.,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for La Crosse County:

GLORIA L. DOYLE, Judge. *Affirmed.*

¶1 SHERMAN, J.¹ Menard, Inc. appeals a money judgment in favor of Tom Weber. Weber brought suit against Menard² in small claims court, seeking to recover for damages allegedly sustained to his camper by a forklift belonging to Menard while the camper was parked on the premises of a Menards' store, owned by Menard. Menard challenges the circuit court's finding that the camper was damaged at Menards by Menard's machinery. For the following reasons, I affirm.

DISCUSSION

¶2 Menard contends the evidence was insufficient to support the circuit court's finding that a forklift belonging to Menard was the cause of damage to Weber's camper. Menard argues that there was no direct evidence that a forklift belonging to Menard caused the damage to Weber's camper, and that the court improperly relied upon speculation and conjecture to find that Menard caused the damage to Weber's camper.

¶3 “The test for determining causation is whether the conduct at issue was a substantial factor in producing the injury.” *Estate of Cavanaugh by Cavanaugh v. Andrade*, 202 Wis. 2d 290, 306, 550 N.W.2d 103 (1996). Causation is generally a question of fact, and we will sustain the fact finder's finding “if there is any credible evidence under any reasonable view or any reasonable inferences derived therefrom that support [it].” *Id.* (quoted source

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise indicated.

² The defendant corporation is Menard, Inc., but the name of the stores operated by Menard, Inc. is Menards. Accordingly, when I refer to Menard, I am referring to the corporation that owns the store, which I refer to as Menards.

omitted). When the circuit court acts as the fact finder, that court is the ultimate arbiter of the credibility of the witnesses and the weight to be given to each witness's testimony. *State v. Peppertree Resort Vilas, Inc.*, 2002 WI App 207, ¶19, 257 Wis. 2d 421, 651 N.W.2d 345. "When more than one reasonable inference can be drawn from the credible evidence, the reviewing court must accept the inference drawn by the trier of fact." *Id.*

¶4 I conclude that there is sufficient credible evidence in the record to support the inference that Menard's negligence was a substantial factor in causing the damage to Weber's camper.

¶5 At trial, Weber testified on August 16, 2012, he parked his vehicle and camper, which sits in the bed of his truck, and a trailer towing behind the truck in a Menards store lumberyard. Weber testified that prior to then, his camper was undamaged. Weber testified that after making his purchases at Menards, he drove home where he parked his vehicle, camper and trailer on his driveway. Weber testified that he went inside his residence for approximately two minutes, and then returned outside to unload his purchases from his vehicle. Weber testified that when he returned outside, he discovered what "appear[ed] to be a spear mark from a forklift in the trailer" and "the support posts for the camper [were] torn in the direction as if it had been struck from the front going towards the rear." Weber testified that if the damage to his trailer and camper had occurred during the two minutes he was inside his house, he would have heard the sound of the accident. Weber also testified that immediately after observing the damage, he called Menards to report the damage.

¶6 Congressman Ron Kind testified that he is a longtime friend of Weber and that on August 16, 2012, he was at Menards at the same time as

Weber. Congressman Kind testified that Weber showed Kind his camper and Congressman Kind “looked it over pretty well.” Congressman Kind testified that there was no damage to the camper when he looked at it.

¶7 Mike Marco, the owner of Mike’s Auto Body and Marine, testified that Weber brought the camper and trailer to his business for repair. Marco testified that “something heavy” had hit the camper and trailer, and the damage to both appeared to be caused by a forklift. Marco testified that he had previously repaired a motorhome that had been damaged by a forklift and that the damage to Weber’s camper and trailer was consistent with the damage that had been caused to the motorhome by a forklift.

¶8 Chris Thelemann, a manager for Menards, testified that forklifts are operated around Menards’ lumberyard and that if a forklift hits something, the forklift tins can make a rectangular stab mark. Thelemann testified that no employee admitted to having caused damage to Weber’s camper and trailer. He also testified, however, that if an employee caused damage with a forklift, the employee would be “held accountable.”

¶9 The testimony detailed above in ¶¶5-8 shows that Weber’s camper and trailer were undamaged when he parked at Menards, but that there was damage to both when he arrived home. The testimony shows that between leaving Menards and arriving home, the camper and trailer were within Weber’s control. The testimony also shows that the damage to the camper and trailer is consistent with the damage that would be caused by a forklift. I conclude that the circuit court could reasonably infer from the testimony at trial that the damage to Weber’s camper was caused by a forklift while Weber was parked at the Menards store lumberyard. Because there is credible evidence from which the court could

reasonably infer that a Menard forklift damaged Weber's camper and trailer, I affirm the court's finding as to causation.

CONCLUSION

¶10 For the reasons discussed above, I affirm.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

